REMARKS

The Office Action mailed August 9, 2007, has been received and reviewed. Prior to the present communication, claim 1 was pending in the subject application. Claim 1 was rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 was also rejected under 35 U.S.C. § 103 as being unpatentable over Applicant-cited art No. 11 (hereinafter the "Weinert reference") in view of Geographic Variations in Utilization Rates in Veterans Affairs Hospitals and Clinics by Ashton (hereinafter the "Ashton reference"). Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 112

Claim 1 was rejected to under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 has been amended herein in response to each of the Examiner's objections and is now believed to be in appropriate form. Specifically, the limitation on page 7 has been amended to "based upon time or distance." Thus, withdrawal of the 35 U.S.C. § 112 ¶ 2 rejection is respectfully requested.

Rejections based on 35 U.S.C. § 103(a)

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and

content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestion or motivation found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See, *Application of Bergel*, 292 F. 2d 955, 956-957 (1961). Thus, in order "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." *See* MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application]." *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

Claim 1 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Weinert reference in view of the Ashton reference. As neither the Weinert reference nor the

Ashton reference, either alone or in combination, teach or suggest every limitation of amended claim 1, Applicants respectfully traverse this rejection.

Independent claim 1, as currently amended, recites a method in a computing environment for effecting a controlled, recurring assessment of a care episode and service utilization patterns associated with a locale, the locale including a plurality of corresponding institutions, which comprises, in part, transforming distance values, the distance values measured in physical distance or elapsed time, the physical distance or elapsed time measured from a location at which inception of a clinical event occurred to a health facility in the catchment area where appropriate care is secured, and transforming population values, using a Box-Cox transform, for the locale where each care episode originates, the population values measured in persons or persons per square mile, wherein the clinical indicators are used *to assess quality of health services in the locale*, the quality assessment including at least one of identifying under-resourced locale health care needs, monitoring prevention of medical complications, and comparing performance of the locale to other communities. As stated in the Specification, embodiments of the present invention provide policy makers and health-care providers with the tools to determine, among other things, quality assessments such as:

- How does the low birth weight rate in my locale compare with the national average?
- What can the rate of new cancer management encounters exceeding fourteen days tell me about the adequacy of oncology care in my community?
- Does the admission rate for diabetes complications in my community suggest a problem in the provision of appropriate outpatient care to this population?
- How does the admission rate for congestive heart failure vary over time and from one region of the country to another?

See Specification, at p. 4, ¶ [0012]. Thus, embodiments of the present invention provide effective management of health-care services in metropolitan, suburban, and rural areas.

By way of contrast, the Weinert reference discloses a study for a measure of rurality that involves statistical analysis of two variables: county population and distance (for a family) to emergency care. *See*, *Weinert reference* at p. 455, Col. 2, ¶ 2. The Weinert reference argues that this complex statistical analysis of the two variables provides a more accurate representation of rurality, resolving three common problems of rural research (e.g., failure to capture variability, county-based analysis, and nationally-normed data). *See*, *Weinert reference* at p. 454, Col. 1, ¶ 2 – p. 455, Col. 1, ¶ 2. Thus, the *Weinert* reference discloses a statistical analysis that provides a better (at least arguably) indication of rurality than the more commonly-used analyses previously available. *See generally Weinert reference*. But the Weinert reference does not disclose assessing the quality of health services in a locale. Instead, the Weinert reference uses the distance to emergency care as a variable for ascertaining relative rurality for a family. The Weinert reference does mention that the finer urban/rural classifications provided by the statistical method may be useful in comparing health care variables. *See Weinert reference* at p. 454, Col. 2, ¶ 3, p. 463, Col. 2, ¶ 6. This mention of health care variables, however, does not teach or suggest assessing the quality of health care services provided in a locale. Nor does the Weinert reference teach or suggest identifying under-resourced locale health care needs, monitoring prevention of medical complications, and comparing performance of the locale to other communities. Rather, the Weinert reference merely mentions a potential utility of its superior rurality analysis.

The addition of the Ashton reference fails to cure this deficiency. As previously submitted, the Ashton reference discloses a study of geographic variation in the Department of Veterans Affairs hospitals analyzing the utilization variation among the 22 networks within the Department. *See generally Ashton reference.* The Department of Veterans Affairs study of the Ashton reference, like the Weinert reference, fails to teach or suggest using clinical indicators to assess the health services of a locale. Nor does the Ashton reference teach or suggest identifying under-resourced locale health care needs, monitoring prevention of medical complications, and comparing performance of the locale to other communities. Accordingly, it is respectfully submitted that the Weinert and Ashton references, either alone or in combination, fail to teach or suggest each element of independent claim 1, as amended herein. Thus, claim 1 is patentable over the Weinert and Ashton references. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection of this claim is respectfully requested.

CONCLUSION

For at least the reasons stated above, and upon entry of the amendments included herein, claim 1 is believed to be in condition for allowance. As such, Applicant respectfully requests withdrawal of the pending rejection and allowance of claim 1. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned by phone prior to issuing a subsequent action.

A two-month extension fee as well as a fee accompanying a Request for Continued Examination have been submitted herewith. It is believed that no additional fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any additional amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.103792.

Date: January 9, 2008

Respectfully submitted,

/ABRAN J. KEAN/

Abran J. Kean
Reg. No. 58,540

AJKX
SHOOK HARDY & BACON, LLP
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
(816) 474-6550